

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs October 24, 2006

STATE OF TENNESSEE v. SHERRY DENISE STEWART

**Direct Appeal from the Criminal Court for Sullivan County
Nos. S45,004 and S45,169 R. Jerry Beck, Judge**

No. E2006-00519-CCA-R3-CD - Filed January 29, 2007

The defendant, Sherry Denise Stewart, pled guilty to violating her probation and now appeals the trial court's order requiring her to serve the balance of her original, effective ten-year sentence. We affirm the judgments of the trial court in accordance with Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Thomas J. Seeley, III, Bristol, Tennessee; Stephen M. Wallace, District Public Defender; and Terry L. Jordan, Assistant Public Defender, for the appellant, Sherry Denise Stewart.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Joseph E. Perrin, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The defendant was serving an effective ten-year sentence from pleading guilty to sale of over one-half gram of cocaine, a Class B felony, and retaliation for past action, a Class E felony. She was released on probation on the first conviction after serving almost two years, and she was originally on probation for the second conviction, which ran consecutively to the first. She pled guilty to the probation violation warrants and requested a hearing to present mitigation evidence. After the hearing, the trial court revoked her probation and ordered that she serve the remaining balance of her sentence.

On appeal, the defendant does not contest the revocation of her probation but, rather, the trial court's ordering her to serve the balance of her sentence in confinement rather than allowing her to remain on probation or to serve some other form of alternative sentence.

A trial judge is vested with the discretionary authority to revoke probation if a preponderance of the evidence establishes that a defendant violated the conditions of his or her probation. See T.C.A. §§ 40-35-310, -311(e); State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001). "The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment." State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

When a probation revocation is challenged, the appellate courts have a limited scope of review. This court will not overturn a trial court's revocation of a defendant's probation absent an abuse of discretion. See Shaffer, 45 S.W.3d at 554. For an appellate court to be warranted in finding that a trial judge abused his or her discretion by revoking probation, "there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred." Id.

The evidence contained in this record shows the defendant admitted she violated the terms of her probation by stealing from a man she was hired to care for. She stole from him to support a drug habit. We conclude the trial court neither erred nor abused its discretion in revoking the defendant's probation and in ordering that her sentence be served in confinement.

It appearing that the evidence does not preponderate against the trial court's findings and that this opinion would have no precedential value, the judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

JOHN EVERETT WILLIAMS, JUDGE